MISCELLANY.

Rats.—In Lumpkin *v.* Provident Loan Society Incorporated, 15 Ga. App. 816, 820, 84 S. E. 216, the court said: "The whole trouble of the plaintiff in error can be summed up in one word—rats! It is true that the evidence discloses that the office was badly ventilated, and one witness for the defendant in error testified that was the cause of the bad odor; but the plaintiff in error himself makes no such complaint; he puts the bad odors, and the consequent untenantability of his office, squarely upon the 'offending heads' of the rats. There is no contention that the rodents disturbed the office force by unseemly squeaking or squealing, or that they otherwise conducted themselves in any ungentlemanly or unladylike manner, or that they gnawed his furniture, or that they themselves had a bad odor; but the sole contention is that they brought in food, presumably from an adjoining restaurant (which was established about a year after the plaintiff in error leased his office), and that this food alone caused the offensive odors. The plaintiff in error, not being an object of charity, but a man of considerable means, strongly objected to having food thus brought in to him from his neighbors, and especially the kind that was furnished, he not being especially fond of 'chicken bones,' 'fish heads,' 'scraps of cheese,' 'tripe,' and such like delicacies. He testified that he disinfected the premises, but all in vain. He set traps, and every day caught scores of rats 'as big as squirrels,' but their numbers were no more diminished by his captures than were the ranks of the allies or the Germans by the 'Battles of the Aisne.' No traps, no disinfectants, 'no nothing' could stop the onslaught of these hungry and persistent vermin; they were imbued with the true 'Atlanta spirit,' and continued with undiminished ardor their kindly meant but misunderstood attentions. Finally, in despair, the plaintiff in error, having no 'pied piper' to entice them by the witchery of his music to their destruction in the 'rolling waters of the river Weser' (or the Chattahoochee), cut the 'Gordian knot' by breaking his lease and moving to another and distinct building. We do not think that, under the law and the evidence, the landlord can be held responsible for the action of the rats. It is clearly established that there was no bad odor in the premises of the plaintiff in error until after the adjoining restaurant was opened (about a year after the plaintiff in error leased his office), and that the odor was caused entirely by food brought in, presumably from that restaurant, by rats. There was no evidence to show that the restaurant was a nuisance, or that it was improperly conducted. The plaintiff in error himself declared in his testimony that he could not swear that it was a nuisance, and that he did not desire it closed up, as it was not responsible for his troubles, and the landlord offered to remove the

restaurant if the plaintiff in error would swear that it was a nuisance, and the plaintiff in error declined to do so, saying it was not to blame. If the restaurant which caused the influx of the rats, and was thereby indirectly responsible for the odor, was not to blame, how could the landlord be held responsible for the actions of these pests? There is, however, another plea which the plaintiff in error might have set up by way of recoupment, which would have received our careful and sympathetic consideration. The fear of rats, and even of mice, entertained by the fair sex, is proverbial, and this court will take judicial cognizance of the fact that any real-estate office overrun by such vermin would lose all patronage of the ladies, and would be entirely deprived of the refining and elevating influence of their presence, to say nothing of the more substantial emoluments derived from business dealings with them. If the plaintiff in error had rested his case on this ground, at once solid and sentimental, this court (though all of its members are staid and settled married men, but, like all men of intelligence and discernment, fond of the beautiful) would have diligently sought to find a way to relieve him, if not by the harsh and inflexible rules of law, then by the softer and more pliant ones of equity. But the plaintiff in error (possibly through fear of his better half) not having made this plea, the only thing we can do, while affirming the judgment against him, is to tender our congratulations upon the fact that at last he has escaped from his too attentive friends (?)—the rats."

The Law of Lek.—Twelve old men, an ancient unwritten law, and a rifle, constitute the legal machinery of Northern Albania. This ancient law is the law of Lek, laid down in the Fifteenth Century by Lek Dukaghini and which today is more rigidly obeyed than the rules of Christianity or Islam.

When a Northern Albanian suspects his neighbor of making away with his cattle, his horse or his crops, he recalls the law of Lek and carries his case to the Council of Elders, consisting of the banner bearer of the tribe, four chiefs, twelve heads of houses and twelve old men, the last named having full knowledge of the law. In solemn procession they meet in the open near the church or mosque. This is a country where the party of the first part and the party of the second part state their case before a jury picked by the plaintiff. It apparently pays to be the plaintiff. He first appears before the banner bearer with his string of "conjurers" or jurymen. The number of these "conjurers" may vary according to the nature of the crime, twenty-four being allowed for murder, and from two to ten for stealing, the latter number based on the value of the goods stolen.

The accused and the plaintiff, with the chosen jurymen, go before the Council, where the two principals state their case. Should the

decision lack one of being unanimous, the dissenting one is dismissed, being replaced by two more until all the "conjurers" agree.

If the verdict is "innocent" the accused is acquitted by the twelve old men, after which all retire to the church or mosque, where, before the priest, the accused confirms the verdict by swearing to his innocence. If the verdict is "guilty," the twelve old men fix the punishment, which is not difficult, for the law of Lek knows one—destruction of property. Death or imprisonment never figure in their decision, for Lek, being a wise judge and knowing his people, reasoned that death would but start a fued. So the decision of the twelve wise men may call for the burning of the fields or the crops which he may have harvested, the slaughter of the cattle, or even the destruction of the home of the accused.

Handwriting and finger experts are unknown in Albania and the courts of the land are lawyerless, for it is one country where the services of an attorney are never needed. The decision of the twelve old men is final and the sole court of appeal is the rifle.

The rifle end of Albania's legal machinery is invoked only when the murder has been done, to avenge a personal insult, when a girl of the family has been abducted, or when one has flirted a bit too ardently with a neighbor's wife. These cases seldom come before the Council. To the Albanian the law of the rifle is as legal as any law in Europe or America; "blood can be wiped out only by blood," and a fine line is drawn between "blood vengeance" and common murder. The former is slaying according to the laws of honor, while the latter is plain, low-down, contemptible killing.

This "blood vengeance" is not a haphazard, hit or miss affair, but is played according to rigidly observed rules. An Albanian never shoots his enemy when the latter is with a woman or a child, neither does he kill when once he and his enemy have taken the oath of peace. This oath is often taken when to do so is to the mutual business interests of the parties concerned or at times when the country is in danger. The armistice having expired, both sides return to the gentlemanly task of trying to kill each other. Having completed his task, the avenger proclaims his deed so that all may know his honor is clean.

So strict are the rules of the game that should the avenger seek shelter in the home of the one he has just killed, its inmates are bound to give him food and protection, for, as their guest, his life is sacred.

Members of the American Red Cross units in Albania have on several occasions been interested spectators at trials before the Council of Elders. Emergency relief, combined with sanitary and hygienic first aid, designed to start an effort towards social improvement which the Albanians themselves will carry on after the withdrawal of outside assistance, has been the primary work of the American Red Cross in Albania. The personnel of the units have so gained the confidence

and gratitude of the Albanian mountaineers that even the law courts are open to the Americans, where the dispensation of justice, according to the Law of Lek, may be observed.—*The Lawyer and Banker.*

"Bootlegger" Defined.—In Scriven *v.* Lebanon, 99 Kan. 602, the court said: "Drawing upon our judicial knowledge of that specimen of the genus homo, a bootlegger is a person who sells intoxicating liquors on the sly, not from any particular business location, but carrying his wares in his bootleg, in his pockets, or keeping them in some fitting hole in the wall of easy access to himself and provokingly hard of discovery to the officers of the law. When such a person establishes himself in a definite place of business, where by skilful legerdemain he can sell or pretend to sell the innocent juice of the apple as well as beer—both 'near' and 'far'—and other intoxicants, the niceties of the Kansas language designate him as a 'jointist,' and no longer in the mere plebeian class of 'bootlegger.'"

Cussing the Umpire.—In Park *v.* Carmichael, 20 Ga. App. 36, 92 S. E. 397, the court said: "A most painful impression has been made upon this court by the very irrelevant and intemperate criticism of the lower court contained in the brief of counsel for the plaintiff in error. In law as well as in 'baseball' it may be natural for the losing side 'cuss' the 'umpire.' However, any such 'cussing' in the former profession must be done elsewhere than before this court. Hereafter briefs of counsel which contain irrelevant, intemperate, and illegitimate animadversion on the lower court will not be considered, but, by order of the court, will be returned to counsel, and will not again be received until the objectionable matter has been stricken."

Animals in Court.—The campaign in Paris to destroy the millions and millions of rats there reminds the London Law Notes "that in olden days in France, legal proceedings used to be taken against them. An old story is told of a French advocate who defended the rats and got them off. They did not appear to the first citation; on his application the matter was adjourned so that they might all be served. Again they did not appear; he obtained from the court an extension of time on the ground that many were old and sick. Still they came not. Their advocate pleaded that they were most anxious to obey the citation and attend the court, but they went in fear of the cats, and asked the court to secure their safety in attending. This course the court thought most reasonable, but cat owners said they could not give the necessary guaranty; so the matter was adjourned indefinitely. This is not fiction; it is a true story."

This procedure is no longer in vogue; but rats are still an object of judicial animadversion. In Stearn *v.* Prentice Bros. [1919] 1

K. B. 394, 9 B. R. C. 535, a manufacturer of fertilizers, who, for the purpose of his business, had on his premises a heap of bones, not unusual or excessive in quantity, which caused large numbers of rats to assemble there, was held not liable for damage done to his neighbor's crops by the rats.

It appeared that the defendants had premises on land divided by a meadow from the plaintiff's fields, where the damage was done. The defendants had a factory on their premises, where they had carried on the business of artificial manure manufacturers for at least thirty years. The plaintiff had made no complaint till the years 1916 and 1917, when there had been a large increase in the numbers of rats on the plaintiff's fields. For the purpose of their business the defendants had a heap of bones, and this attracted the rats; between the defendants' factory and the plaintiff's fields there were runs which showed that large numbers of rats passed backwards and forwards between the defendants' factory and the plaintiff's fields. There was no evidence to show that the bone department of the defendants' business had been increased, or that the heap of bones was larger than in the past years, or that the increase in the numbers of rats was due to anything done by the defendants. The county court judge, at the conclusion of the plaintiff's case, held that there was no evidence to prove a cause of action, and entered judgment for the defendants. The plaintiff appealed.

In its judgment the court said: "Is a man who, in the ordinary course of his business, has large quantities of food on his premises, which is likely to attract rats, responsible for damage caused by rats so attracted, without any evidence that the quantities of food were unusual or excessive? It is certain that this is a novel cause of action. Bone-manure manufactories must have existed for a very great number of years. Bones are a natural but valuable waste product from the rearing of cattle or sheep for slaughter for the purpose of providing meat. Rats have been the enemies of farmers ever since land was cultivated. If proper measures are not taken by occupiers of lands to destroy them, they quickly increase. They are *feræ naturæ*. I think under these circumstances it is incumbent on the plaintiff to produce some authority in support of his proposition. As Lord Coleridge, Ch. J., said in Giles *v.* Walker, L. R. A. 24 Q. B. Div. 657, 59 L. T. N. S. 933, 38 Week. Rep. 782, 54 J. P. 599: 'I never heard of such an action as this. There can be no duty as between adjoining occupiers to cut the thistles, which are the natural growth of the soil.'"

The court referred to Boulston's Case, 5 Coke, 104 b, 77 Eng. Reprint, 216, and remarked: "It is there held that 'if a man makes cony-burrows in his own land, which increase in so great number that they destroy his neighbors' land next adjoining, his neighbors cannot have an action on the case against him who makes the said cony-burrows; for so soon as the conies come to his neighbor's land,

he may kill them, for they are *ferœ naturæ*, and he who makes the cony-burrows has no property in them, and he shall not be punished for the damage which the conies do in which he has no property, and which the other may lawfully kill.' That was an action on the case, as here, and seems to be directly in point. I am not aware that this decision has ever been overruled or questioned."

The learned judge concluded: "In my opinion there is no authority for the proposition put forward by the plaintiff. I think the appeal fails, and must be dismissed, with costs."

An extensive search has failed to disclose any other case upon the question whether the attracting of rats to premises is an actionable nuisance.

The elusive rat seems never to have been brought into open court *in propria persona*, but various other animals have been haled there on due occasion. A news item issued during the summer months stated that Minnie, a bare-legged, red-jacketed, green-capped monkey, supœnaed as star witness for the prosecution in a gambling case, successfully wrecked the dignity of a New York magistrate's court. Minnie was supposed to show how she aided her owner in conducting a corner lot game of chance by pulling out of a box numbered balls upon which participants had placed bets. Instead, this is what Minnie did: Leaped onto the magistrate's desk, causing the judge to duck; drained a bottle of ink; hurled at an attendant a glass of water he handed her as a chaser; tore the coat of a detective ordered to arrest her, and finally departed from court screeching.

The narrative ends here, from which we may infer that this flagrant contempt of court passed unpunished. Anciently they managed matters differently. Animals often were held to strict accountability. The London Law Notes observes that "the French were much given to trying animals. There was a celebrated case in 1760 or thereabouts, of the donkey who drank the Holy Water: the poor beast was hanged and burnt."

It is said in Chamberlayne on Evidence, § 3591, that the judge may, in the exercise of his administrative powers, permit the production of animals in court, whenever the evidence afforded thereby is relevant to the issue. The case of Line *v.* Taylor, 3 Fost. & F. 731, is cited. This was a prosecution for keeping a fierce and mischievous dog, and the animal was brought into court for the inspection of the jury, that they might determine as to his ferocity.

Similarly in Thurman *v.* Bertram (Exch. D.) 20 Albany, L. J. 151, a baby elephant which was alleged to have frightened plaintiff's pony by its "unsightly and unusual appearance" was brought into court and stood, a mute witness for the defense, before the jury.

Professor Wigmore, in his Treatise on Evidence, § 1154, cites "the following classic example" to illustrate "the propriety of experimentation when the fact ascertainable from it is a relevant one: 'When I was Chief Justice of the Common Pleas (I did like that court!) a

cause was brought before me,' said Lord Eldon, 'for the recovery of a dog, which the defendant had stolen in that ground (lying in the fields beyond his house), and detained from the plaintiff, its owner. We had a great deal of evidence, and the dog was brought into court and placed on the table between the judge and witnesses. It was a very fine dog, very large and very fierce, so much so that I ordered a muzzle to be put on it. Well, we could come to no decision; when a woman, all in rags, came forward and said, if I would allow her to get into the witness box, she thought she could say something that would decide the cause. Well, she was sworn just as she was, all in rags, and leant forward towards the animal, and said. "Come, Billy, come and kiss me!" The savage-looking dog instantly raised itself on its hind leg, put its immense paws around her neck, and saluted her. She had brought it up from a puppy. Those words, "Come, Billy, come and kiss me," decided the cause.' "

In § 177 of the same work there is a reference to the story, quoted in 2 Campbell's Lives of the Chancellors, 37, of the beggar woman's little dog, which was bought from a thief by the wife of the chancellor, Sir Thomas More. The chancellor allowed the claimant to prove her property by the dog's recognition of her.

According to an amusing paragraph taken from the Chicago Herald, and preserved in § 177, "a German saloon keeper in Chicago lost his parrot; in the possession of an American saloon keeper a similar parrot was found; the ownership of this parrot was claimed by both parties, each affirming that he had possessed and trained the parrot for a long time, and that the parrot would show the effect of this training in his language; at the trial before Justice of the Peace Eberhardt, the parrot would not speak; he was therefore committed temporarily to the custody of a police captain; 'Captain Barcel will keep the bird in custody, and will keep his ears strained to catch either "Set 'em up again," or "Unser bier ist gut." ' "

This evidential use of the behavior of animals, states Professor Wigmore, "is well established in judicial practice, though it has seldom been brought before courts of appeal."—*Case and Comment.*